



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/613,339	07/10/2000	Nobuyoshi Morimoto	5596-00300	9759

7590 07/26/2005

ROBERT C KOWERT
MEYERTONS HOOD KIVIN KOWERT & GOETZEL PC
P O BOX 398
AUSTIN, TX 78767-0398

EXAMINER

ELISCA, PIERRE E

ART UNIT PAPER NUMBER

3621

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/613,339

Applicant(s)

MORIMOTO, NOBUYOSHI

Examiner

Pierre E. Elisca

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Regarding the status of the instant application, the Examiner has made an updated search and found new prior art. The Examiner is obliged to apply the newly found prior art. Thus, the finality of the prior office action has been withdrawn and a new rejection follows. The Examiner regrets the delayed process of the application. Accordingly, claims 1-44 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-44 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Kinney, Jr. et al (U.S. Pat. No. 6,871,191) in view of Treyz et al. (U.S. Pat. No. 6,587,835).

As per claims 1, 9-13, 29, 30, 35 and 37-44 Kinney substantially discloses a method/system for conducting electronic online auctions having partial quantity evaluated rank bidding, the method comprising:

in response to said detecting, making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time (see., abstract, col 9, lines 30-39, col 10, lines 1-14);

if said purchaser accepts said offer (col 9, lines 30-39, col 10, lines 1-14, col 15 and col 16):

conducting a search for said improved terms within said specified time; receiving said improved terms within said specified time; and executing said contract (see., abstract, col 9, lines 30-39, col 10, lines 1-14, col 15 and col 16). It is obvious to realize that during auction customers can use credit card as a mean of payment. It is to be noted that Kinney fails to explicitly disclose a commitment to purchase with associated terms for said product. However, Treyz discloses a system in which users make financial commitment toward purchases (see., abstract, col 1, lines 49-52, col 11, lines 63-67, col 12, lines 1-10). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teaching of Kinney by including the limitation detailed above as taught by Treyz because this would provide commitment toward purchases prior to completing purchase transactions.

As per claims 2, 8, 31 and 36 Kinney discloses the claimed method wherein said detecting comprises detecting said purchaser entering a credit card number or a pre-paid account number or a gift certificate number (see., col 9, lines 30-39, col 10, lines 1-14. It is obvious to realize that during auction customers can use credit card as a mean of payment).

As per claims 3-7, 32, 33 and 34, Kinney discloses the claimed method wherein said detecting said purchaser viewing a particular web page (see., fig 3, col 9, lines 30-39, col 10, lines 1-14. Please note that this is an online transaction customers can view a particular web page or product).

As per claims 14, 20 and 22-28 Kinney discloses a system for conducting electronic online auctions having partial quantity evaluated rank bidding, the method comprising:

in response to said detecting, making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time (see., abstract, col 9, lines 30-39, col 10, lines 1-14);

if said purchaser accepts said offer (col 9, lines 30-39, col 10, lines 1-14, col 15 and col 16):

conducting a search for said improved terms within said specified time; receiving said improved terms within said specified time; and executing said contract (see., abstract, col 9, lines 30-39, col 10, lines 1-14, col 15 and col 16). It is obvious to realize that during auction customers can use credit card as a mean of payment. It is to be noted that Kinney fails to explicitly disclose a commitment to purchase with associated terms for said product. However, Treyz discloses a system in which users make financial commitment toward purchases (see., abstract, col 1, lines 49-52, col 11, lines 63-67, col 12, lines 1-10). Therefore, it would have been obvious to a person of ordinary skill in the

Art Unit: 3621

art at the time the invention was made to modify the teaching of Kinney by including the limitation detailed above as taught by Treyz because this would provide commitment toward purchases prior to completing purchase transactions.

As per claims 15 and 21 Kinney discloses the claimed limitations wherein said detecting comprises detecting said purchaser entering a credit card number or a pre-paid account number or a gift certificate number (see., col 9, lines 30-39, col 10, lines 1-14. It is obvious to realize that during auction customers can use credit card as a mean of payment).

As per claims 16-19 Kinney discloses the claimed limitations wherein said detecting said purchaser viewing a particular web page (see., fig 3, col 9, lines 30-39, col 10, lines 1-14. Please note that this is an online transaction customers can view a particular web page or product).

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre E. Elisca whose telephone number is 703 305-3987. The examiner can normally be reached on 6:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703 305-9769. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3621

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Pierre Eddy Elisca

Primary Patent Examiner

July 25, 2005